IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SEYMOUR COOPER	:	CIVIL ACTION
	:	
v.	:	
	:	
NATIONWIDE MUTUAL INSURANCE COMPANY	:	NO. 02-2138

MEMORANDUM

Dalzell, J. November 7, 2002

Background

As will be seen, this litigation has moved with glacial speed merely to reach a Rule 12 motion.

In 1988, plaintiff Seymour Cooper owned and operated an automobile insured with defendant Nationwide Mutual Insurance Company. The policy provided $250,000 of uninsured and underinsured motorist ("UIM") coverage. While operating the car on July 22, 1988, Cooper was involved in an accident and suffered serious injuries. The other driver was insured by Cigna Insurance Company. In February 1992, Cigna offered Cooper the policy limit of $15,000, and Cooper accepted this offer with Nationwide's consent. Cooper then attempted to recover UIM benefits under his Nationwide policy. After Nationwide rebuffed Cooper's efforts to negotiate a settlement, Cooper demanded arbitration, which finally took place on May 14, 1997, in Pike County, Pennsylvania. The arbitrators entered an award of $145,000 and reduced it by the $15,000 Cooper had already received from Cigna, resulting in a net award of $130,000.

Nationwide tendered the full amount of the net award.

When Cooper refused to release his UIM benefits, Nationwide withdrew its tender. Whereupon, in April 1998, Cooper filed suit against Nationwide in the Philadelphia County Court of Common Pleas (the "state court suit"). That complaint asserted claims for breach of contract, deceit, and violations of the Pennsylvania insurance "bad faith" statute, 42 Pa. Stat. Ann. § 8371 (West 1998), Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 Pa. Stat. Ann. § 201-1 et seq. (West 1993), and Unfair Insurance Practices Act ("UIPA"), 40 Pa. Stat. Ann. § 1171.5(a)(10) (West 1999).[1] On December 17, 2001, the parties entered into an agreement (the "side letter agreement"), pursuant to which Cooper discontinued the suit without prejudice and the parties would then try to resolve their dispute.

After the parties signed the side letter agreement, Cooper's counsel apparently attempted to restart the settlement process. See id. Ex. D, F, G. Although defense counsel forwarded Cooper's correspondence to the proper person at Nationwide, there was no response. Id. Ex. F, G. Cooper then filed the present suit against Nationwide.

Cooper's complaint here restates all of the factual allegations in the state court suit, with one important addition: he asserts that Nationwide's conduct after the instigation of the state court suit is actionable under several theories of

[1] Cooper v. Nationwide Mut. Ins. Co., Ct. of Common Pleas, Philadelphia County, Civ. No. 152 (April Term 1998).

liability. Before us is Nationwide's motion to dismiss.[2]

Discussion

Nationwide's memorandum of law advances a variety of arguments in a complex organizational format that, we surmise, was largely dictated by the manner in which Cooper incorporates his 1998 state court complaint into his federal complaint. To avoid confusion, we will examine each argument in the order it is presented in Nationwide's memorandum of law, even though this approach requires us to visit certain issues, such as Nationwide's potential liability under various Pennsylvania statutes, more than once.

A. Venue

Nationwide first asserts that Cooper's complaint does not satisfy the venue requirements of 28 U.S.C. § 1391 and that we should transfer the case to the Middle District of

[2] In resolving a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), we look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1251, 1261 (3d Cir. 1994). We accept as true all factual allegations in the complaint, and we draw all reasonable inferences therefrom in the light most favorable to the non-movant. General Motors Corp. v. New A.C. Chevrolet, Inc., 263 F.3d 296, 325 (3d Cir. 2001). Although we need not accept as true "unsupported conclusions and unwarranted inferences," we must deem the complaint to have alleged sufficient facts if it adequately provides the defendants with notice of the essential elements of the plaintiff's claims. Langford v. City of Atlantic City, 235 F.3d 845, 847 (3d Cir. 2000); Schuylkill Energy Res., Inc. v. Pennsylvania Power & Light Co., 113 F.3d 405, 417 (3d Cir. 1997). We may dismiss a complaint "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

Pennsylvania.

We reject Nationwide's contention that venue does not lie in this district. Cooper can establish venue under Section 1391(a)(1), which provides that a civil action founded solely on diversity may be brought "in a judicial district where any defendant resides . . . ." For purposes of venue, a corporation is deemed to reside "in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." 28 U.S.C. § 1391(c). Nationwide conducts extensive business throughout this Commonwealth, and there is no question that it has sufficient minimum contacts here to establish personal jurisdiction.[3]

In the alternative, Nationwide requests that we transfer venue to the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1404(a).[4]

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[3] Nationwide is in fact no stranger to the United States Courthouse at Sixth and Market Streets in Philadelphia. A perusal of this Court's docket reveals over a hundred cases in the past decade in which Nationwide was a plaintiff or defendant. Recent cases include Wood v. Nationwide Mut. Ins. Co., Civ. No. 01-1059 (filed Mar. 5, 2001); Nationwide Mut. Ins. Co. v. Martella, Civ. No. 02-4829 (filed July 19, 2002); Nationwide Mut. Ins. Co. v. Daily et al., Civ. No. 02-4830 (filed July 19, 2002); and Jordan v. Nationwide Mut. Ins. Co., Civ. No. 02-5312 (filed July 24, 2002).

[4] Venue would be proper in the Middle District under 28 U.S.C. § 1391(a)(2) because a substantial part of the events giving rise to Cooper's claims occurred there. Nationwide employees and attorneys in the Middle District handled Cooper's claims through the 1997 arbitration. Cooper's complaint focuses in large part on their allegedly bad faith conduct. Moreover, the arbitration took place in Pike County, which is in the Middle District.

Before we authorize transfer, however, Nationwide must show that it would serve the convenience of the parties and witnesses and promote the interest of justice. Id. Based on the parties' pleadings, two factors are most pertinent to deciding whether a transfer would serve these ends, the plaintiff's choice of forum and the convenience of witnesses.[5] Lindley v. Caterpillar, Inc., 93 F.Supp.2d 615, 617 (E.D. Pa. 2000).

Cooper's decision to file suit in this District is entitled to some weight, particularly since he has represented that he resides here. Compl. ¶ 1 (stating that Cooper resides at 416 South Street in Philadelphia). Nationwide cites Lindley for the proposition that Cooper's choice of forum is entitled to minimal weight because the events that occasioned this litigation occurred in the Middle District. 93 F.Supp.2d at 617. This argument, however, takes an overly crabbed view of the scope of the events at issue here. Even taking into account our dismissal of Cooper's claims to the extent they seek to impose liability on Nationwide for its conduct after the discontinuance of the state court suit, we must still conclude that several significant

[5] We decline to consider the "public interest" factors often employed in venue transfer analysis. Our Court of Appeals has offered the following list of factors that fall in this category: the enforceability of the judgment, familiarity of trial judges with the applicable state law in diversity cases, comparative levels of court congestion in the two fora, and the local interest in deciding local controversies at home. Jumara v. State Farm Ins. Co., 55 F.3d 873, 879-80 (3d Cir. 1995). The first two factors are irrelevant here, the parties have not addressed the third factor, and the fourth factor is inconclusive because the events in this case sprawl across both districts.

events in this case took place in the Eastern District. Cooper received his post-accident medical treatment in Philadelphia. Nationwide sent Cooper to a doctor in Easton for physical evaluation. Finally, Cooper's Philadelphia-based counsel initiated the state court case in Philadelphia and negotiated the side letter agreement with Nationwide's Philadelphia lawyers. We therefore conclude that this case is not analogous to Lindley, where the plaintiff's only tie to our district was that his attorney was here, id., and thus give some deference to Cooper's choice of venue.

We next consider the convenience of the witnesses. A trial in the Eastern District will inconvenience three Nationwide witnesses who all live and work more than one hundred miles from Philadelphia: Chris Decker, Esq., the claims representative who handled Cooper's claim; Nationwide claims attorney Carl Steinbrenner, Esq.; and attorney Bernard M. Billick, Esq., who represented Nationwide in this dispute for much of the 1990s. It has not escaped our attention, however, that a transfer of venue to the Middle District will inconvenience all of Cooper's likely witnesses, who include his physicians and Gary Brownstein, Esq., the lawyer who represented him in this case during the 1990s, including the state court suit.[6] The risk of inconvenience to

[6] Nationwide argues that the medical witnesses' testimony would be irrelevant because the most important issue in this case is what "was known to Nationwide's employees during the pendancy [sic] of his UIM claims." Def.'s Mem. at 7. Without definitively predicting what testimony would, or would not, be relevant at trial, we note that Cooper seeks compensatory and

witnesses is therefore evenly balanced between plaintiff and defendant.

The fact that Cooper resides in Philadelphia and prefers to pursue his case here tips the scales in favor of the Eastern District. We therefore deny Nationwide's request to transfer venue to the Middle District.

B. Striking of Paragraphs 18-31 & 37(a)-(c) and Dismissal of Counts II - V

Nationwide argues that, as a result of the provisions of the side letter agreement, Cooper fails to state any claims to the extent that they seek redress for Nationwide's conduct during the state court suit.

First, Nationwide seeks "dismissal" of Paragraphs 18-31 of the complaint, which are found in its factual background section. These particular paragraphs allege that Nationwide engaged in obstructive conduct during the state court suit and fraudulently induced Cooper to discontinue the case by promising in the side letter agreement to "endeavor" to settle Cooper's claim when it had no intention of negotiating with him.

We construe this portion of Nationwide's motion not as a motion to dismiss but instead as a motion to strike under Fed. R. Civ. P. 12(f). Motions to strike are "not favored [and] usually will be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the

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punitive damages. At minimum, medical testimony would be relevant in the damages phase of the trial.

parties." 5A Wright & Miller, Federal Practice and Procedure: Civil 2d § 1382. Cooper's factual allegations about the circumstances that induced him to discontinue his state court suit are highly material to this litigation because, for the reasons we mention below, Cooper has stated claims for Nationwide's pre-discontinuance conduct. We therefore deny Nationwide's motion to strike.

Nationwide next seeks dismissal of Counts II (UTPCPL), III (statutory bad faith)[7], IV (fraud), and V (deceit) to the extent they seek redress for its conduct after the initiation of the state court suit. Nationwide advances two arguments. First, it asserts that Paragraph 9 of the side letter agreement requires dismissal of these claims. Second, Nationwide contends that, as

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[7] Nationwide contends in Section B of its memorandum of law that "[a]s discussed at length in the earlier part of this Memorandum, the conduct alleged by Plaintiff [relating to Nationwide's actions after the initiation of the state court lawsuit] is not, as a matter of law, admissible nor demonstrative of bad faith conduct." Def.'s Mem. at 10. This statement refers to the argument that Cooper's allegations that Nationwide engaged in bad faith conduct after the initiation of the state court suit cannot establish venue in the Eastern District. See id. at 7-10. We did not need to address this argument in deciding the venue question because we concluded that many pre-1998 events occurred in the Eastern District. However, we understand both from Nationwide's arguments about the scope of the bad faith argument and its references to these arguments in Section B that Nationwide also seeks dismissal of Count III (statutory bad faith) to the extent it relies on Nationwide's conduct after the initiation of the state court lawsuit. Moreover, by seeking the "dismissal" of the factual allegations in Paragraphs 18-31, Nationwide apparently also seeks dismissal of Count III, which incorporates these paragraphs. Although we decline to strike the factual allegations in these paragraphs, we still consider whether Count III states a claim upon which relief can be granted.

a matter of law, Cooper fails to state a claim under Pennsylvania's bad faith statute for conduct after the initiation of the state court suit.

We begin by examining the scope and enforceability of Paragraph 9 of the side letter agreement, which provides:

> This side letter agreement does not establish any additional rights or remedies either plaintiff or defendant had above and over those that were legally available at the time of the discontinuance.

Nationwide argues that this provision excludes liability for its conduct between the initiation of the state court suit and the filing of Cooper's action in this Court.

The plain language of Paragraph 9 cannot support such an expansive interpretation. Paragraph 9 precludes Cooper from asserting claims that were not "available at the time of the discontinuance." It therefore excludes liability for Nationwide's failure to engage in settlement negotiations, mediation, or arbitration after the state court suit was discontinued.[8]

Cooper argues that even if Paragraph 9 bars

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[8] We discern no reason why a consumer or insured person who is represented by counsel cannot enter into a written agreement, negotiated at arms' length, that waives rights under the bad faith statute or UTPCPL. On the frequency with which insured parties waive their rights under the bad faith statute, see Taylor v. Nationwide Ins. Co., 35 Pa. D. & C.4th 101, 118 (Alleg. Cty. C.P. 1997) ("In many instances, it is the threat of the section 8371 suit coupled with the insured's willingness to waive his or her section 8371 claims if the other claims are resolved satisfactorily that is the impetus for resolving the claims in a manner that is satisfactory to the insured.").

Nationwide's liability for its conduct after the discontinuance, Nationwide was still bound by the covenant of good faith and fair dealing to "endeavor to resolve any and/or all outstanding issues in this litigation. . . . " Compl. Ex. B ¶ 5. Our Court of Appeals has observed that under Pennsylvania contract law, the covenant of good faith and fair dealing "is not divorced from the specific clauses of the contract and cannot be used to override an express contractual term." Northview Motors, Inc. v. Chrysler Motors Corp., 227 F.3d 78, 91 (3d Cir. 2000). Paragraph 9 provides that the side letter agreement creates no additional rights or remedies that were not available at the time of the discontinuance. The covenant of good faith cannot subvert Nationwide's legitimate expectation that it was not under an enforceable contractual obligation to continue negotiating with Cooper after the discontinuance.[9] We accordingly dismiss Counts II, III, IV, and V to the extent they rely on conduct between December 18, 2001 (the date of the discontinuance) and the present.

While Paragraph 9 precludes liability for Nationwide's

[9] Nationwide's memorandum of law invites us to declare the side letter agreement a nullity. Even though Nationwide cannot be held liable for failing to negotiate with Cooper after the discontinuance, we do not conclude that Paragraph 9 renders the entire side letter agreement unenforceable. In particular, Paragraph 4, which states that "[f]rom the time of the discontinuance filed with the Court until the time, if any, plaintiff re-institutes suit against Nationwide, the statute of limitations shall not run against the plaintiff," estops Nationwide from asserting a statute of limitations defense to this action.

actions after the discontinuance, it does not waive rights or obligations that accrued before the discontinuance. Nationwide's potential liability for inducing Cooper to enter the side letter agreement would have accrued before the discontinuance of the state court suit on December 18, 2001. Cooper's claims concerning this conduct are therefore not affected by Paragraph 9.

Nationwide next contends that Cooper's claim under the bad faith statute must be dismissed to the extent it focuses on the insurer's conduct after the initiation of the state court suit.[10] To resolve this question, we must examine a difficult issue concerning the bad faith statute that has arisen with some frequency in recent years: whether an insurance company is liable under the statute for bad faith conduct during the pendency of litigation with its insured. It is now well-settled that an insurer's duty to act in good faith does not end with the

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[10] The bad faith statute, 42 Pa. Stat. Ann. § 8371 (West 1998), provides:

> In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:
> (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.
> (2) Award punitive damages against the insurer.
> (3) Assess court costs and attorney fees against the insurer.

Our Court of Appeals has defined "bad faith" for Section 8371 purposes as "a frivolous or unfounded refusal to pay, lack of investigation into the facts, or a failure to communicate with the insured." Frog, Switch & Mfg. Co., Inc. v. Travelers Ins. Co., 193 F.3d 742, 751 n.9 (3d Cir. 1999).

initiation of litigation, but the statute does not impose liability for an insurer's discovery abuses in defending a suit that an insured brings for the bad faith handling of a claim. See Gen'l Refractories Co. v. Fireman's Fund Ins. Co., No. 01-5810, 2002 WL 376923, at *3 (E.D. Pa. Feb. 28, 2002) (Padova, J.); Slater v. Liberty Mut. Ins. Co., No. 98-1711, 1999 WL 178367, at *2 (E.D. Pa. Mar. 30, 1999) (Waldman, J.); O'Donnell ex rel. Mitro v. Allstate Ins. Co., 734 A.2d 901, 908-09 (Pa. Super. 2000). We find persuasive Judge Waldman's conclusion that discovery abuses are not actionable under the statute because they arise not from the parties' relationship as insurer and insured but instead from their relationship as plaintiff and defendant. Slater, 1999 WL 178367, at *2, quoting Shoemaker v. State Farm Mut. Auto. Ins. Co., No. 44998 S 1990, 118 Dauph. Co. 193 (Com. Pl. Dauphin Co. 1998).

Cooper's complaint states that Nationwide engaged in obstructive conduct and induced him to discontinue his state court suit by misrepresenting its intent to evaluate and settle his claim. Compl. ¶ 38 (incorporating Compl. ¶¶ 18, 37(a)-(c)). Drawing all factual inferences from the complaint in the light most favorable to Cooper, we conclude that these allegations go beyond mere discovery abuses. Because Cooper may prove facts that would state a claim under the bad faith statute for Nationwide's conduct during the state court suit, we deny Nationwide's motion to the extent it seeks dismissal of Count III on this ground.

To summarize, we conclude that Cooper has failed to state claims in Counts II, III, IV, and V for Nationwide's conduct after the discontinuance of the state court suit. However, Cooper has stated claims in Counts II-V for Nationwide's conduct before the discontinuance of the state court suit.

C. Failure to State Claim under the UTPCPL

Nationwide argues that the complaint fails to state a claim under the UTPCPL because Cooper merely seeks redress for Nationwide's failure to pay the amount of money he demanded.

It is true that only misfeasance -- and not nonfeasance -- is actionable under the statute. See, e.g., Gordon v. Pennsylvania Blue Shield, 378 Pa. Super. 256, 264, 548 A.2d 600, 604 (1988). It is also true that an insured party does not state a claim under the UTPCPL merely because its insurer fails to pay benefits to which the insured believes he is entitled. Id. But Cooper has alleged facts that support the inference that Nationwide engaged in misfeasance. For example, the complaint alleges that Nationwide's counsel sought to delay arbitration proceedings by repeatedly requesting documents already in his possession and concealed medical reports that were favorable to Cooper from one of its arbitration witnesses. Compl. Ex. A ¶¶ 16-17, 21. Viewed in the light most favorable to Cooper, these allegations fit comfortably within the UTPCPL's definition of "unfair or deceptive acts or practices," which includes "[e]ngaging in . . . fraudulent conduct which creates a

likelihood of confusion or of misunderstanding." 73 Pa. Stat. Ann. § 201-2(4)(xvii) (West 1993).

We therefore deny Nationwide's motion to dismiss Count II on this ground.

D. Striking of Paragraphs 12 & 16 and Exhibit "A" of Plaintiff's Complaint

Paragraph 12 of the complaint incorporates all of the factual allegations in Cooper's state court complaint, and Paragraph 16 incorporates all of the claims in the state court complaint.[11] Cooper appended his state court complaint to the federal complaint as Exhibit "A". Nationwide argues that Paragraphs 12 and 16 as well as Exhibit "A" must be stricken from

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[11] Paragraph 12 states:

> The defendant's conduct is more fully described in the Plaintiff's prior Complaint which was filed in the Philadelphia Court of Common Pleas, as Cooper v. Nationwide, Philadelphia Court of Common Pleas, April Term, 1998, No. 152, (attached hereto as Exhibit "A"), the allegations and [sic] of which are incorporated herein by reference.

Paragraph 16 states:

> Consequently, as a result of the defendant's bad faith conduct as set forth more fully in Exhibit "A," the Plaintiff filed a Complaint in the Philadelphia Court of Common Pleas against the defendant, seeking, inter alia, damages for the defendant's conduct. This Complaint included causes of action for Breach of Contract (Count I), Bad Faith (Count II), Violations of the Unfair Trade Practice Act and Consumer Protection Law (Count III), Deceit (Count IV) and violations of the Insurance Practice's [sic] Act (Count V). The specific allegations and causes of action set forth in the Plaintiff's underlying Complaint are hereby incorporated by reference as though the same were set forth in detail herein. [See Exhibit "A"].

the complaint because Cooper has failed to specify which portions of these state court pleadings he wishes to incorporate into his current pleadings.

Fed. R. Civ. P. 10(c) governs Cooper's incorporation of his state court pleadings into the instant complaint. It provides:

> Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Courts have historically been reluctant to allow an incorporation by reference if it fails to provide adequate notice of the incorporating party's claims, defenses, or factual allegations. See, e.g., Texas Water Supply Corp. v. R.F.C., 204 F.2d 190, 196-97 (5th Cir. 1953); Aktiebolaget Stille-Werner v. Stille-Scanlan, Inc., 1 F.R.D. 395, 396 (S.D.N.Y. 1940). But nothing in Rule 10(c) precludes a party from incorporating all of an earlier pleading. See Gen'l Accident Ins. Co. of Am. v. Fid. & Deposit Co. of Md., 598 F.Supp. 1223, 1229 (E.D. Pa. 1984) ("The later pleading must adopt specific portions or all of the earlier pleading 'with a degree of clarity which enables the responding party to ascertain the nature and extent of the incorporation.") (emphasis added), quoting Heintz & Co. v. Provident Tradesmens Bank & Trust Co., 29 F.R.D. 144, 145 (E.D. Pa. 1961).

Here, Cooper has incorporated his state court factual allegations and legal claims with the level of clarity this Court has long required. Indeed, Nationwide's well-reasoned and

comprehensive motion to dismiss is testimony to the fact that Cooper provided it with sufficient notice of the complaint's scope and factual basis. We therefore decline to strike either Paragraphs 12 and 16 or Exhibit "A".

E. Striking of Paragraph 16 and Dismissal of UTPCPL Claim for Violations of UIPA

Cooper's complaint refers in two places to the UIPA. Paragraph 16 incorporates by reference the counts in his state court complaint, one of which (Count V) asserts a claim under the UIPA. In Paragraph 37(f), which is contained in Count II of the federal complaint, Cooper claims that Nationwide is liable under the UTPCPL for violations of the UIPA.

Nationwide argues that, because there is no private cause of action under the UIPA, Paragraph 16 must be stricken and Cooper's UTPCPL claim must be dismissed to the extent it claims liability for violations of the UIPA. It is true that there is no private cause of action under the UIPA, and it is likely that, absent a reversal of longstanding Pennsylvania jurisprudence, the state court would have dismissed Count V. See Sabo v. Metropolitan Life Ins. Co., 137 F.3d 185, 195 (3d Cir. 1998). But Cooper has not brought a claim under the UIPA in his federal action. Paragraph 16 merely incorporates Cooper's state court claims, including Count V, into the factual background section of his complaint. Given the fact that the events leading up to the filing of the state court complaint in 1998 and its discontinuance in 2001 are central to this case (even in its

post-motion to dismiss form), we see no reason to strike Cooper's UIPA references in Paragraph 16 under Fed. R. Civ. P. 12(f).

We also reject Nationwide's contention that Cooper cannot state a claim under the UTPCPL for violations of the UIPA. Sabo, 137 F.3d at 195 ("We find no indication, through legislative intent or judicial interpretation, that Pennsylvania's non-recognition of a private remedy under the UIPA represents a reasoned state policy of exclusive administrative enforcement or that the vindication of UIPA norms should be limited or rare."); Seidman v. Minnesota Mut. Life Ins. Co., 40 F.Supp.2d 590, 595 (E.D. Pa. 1997) ("[A] private cause of action may be maintained under the UTPCPL even if the acts complained of fall within the purview of another statute such as the UIPA.").

Conclusion

For the foregoing reasons, we conclude that venue lies in this district, and we deny Nationwide's request for transfer of venue under 28 U.S.C. § 1404(a). We dismiss Cooper's claims under Counts II, III, IV, and V, only to the extent they seek to impose liability for Nationwide's conduct after the discontinuance of the state court suit.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SEYMOUR COOPER	:	CIVIL ACTION
	:	
v.	:	
	:	
NATIONWIDE MUTUAL INSURANCE	:	
COMPANY	:	NO. 02-2138

ORDER

AND NOW, this 7th day of November, 2002, upon consideration of defendant's motion to dismiss (docket entry # 3), plaintiff's response thereto, and defendant's request for oral argument (docket entry # 6)[12], it is hereby ORDERED that:

1. Defendant's request for oral argument is DENIED; and

2. Defendant's motion to dismiss is GRANTED IN PART

[12] Defendant appended a reply brief to its request for oral argument without first requesting leave of the Court. See Loc. R. Civ. P. 7.1. We therefore decline to consider the new arguments Nationwide advances in this brief.

in accordance with the accompanying Memorandum.

BY THE COURT:

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Stewart Dalzell, J.